

STATEMENT

OF

MAJOR GENERAL RICHARD X. LARKIN, USA RET., PRESIDENT

OF

THE ASSOCIATION OF FORMER INTELLIGENCE OFFICERS

REGARDING S.1324

"INTELLIGENCE INFORMATION ACT OF 1983"

BEFORE

THE SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

JUNE 28, 1983

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Mr. Chairman and Members of the Committee: I appreciate the privilege of testifying before you today on S.1324 which amends the National Security Act of 1947, by adding a new Title VII which would afford the Central Intelligence Agency a measure of relief from certain provisions of the Freedom of Information Act. I am here as President of the Association of Former Intelligence Officers (AFIO) - some 3500 veterans of the military intelligence services, the CIA, the FBI, the NSA, the DIA, the State Department, and other intelligence entities. With me today is AFIO's Legal Advisor and former General Counsel of CIA, John S. Warner, and Walter J. Pforzheimer, CIA's first legislative counsel.

Since my predecessor as President of AFIO, John M. Maury, testified before the Committee in July 1981 on this matter the tasks of our intelligence agencies have continued to grow in importance and complexity. The substantial damage already inflicted on our intelligence efforts by FOIA must be repaired and corrected. You have had ample testimony by CIA, NSA, FBI and other intelligence entities that sources of information, agents and foreign intelligence services have refused to cooperate because of their fears and lack of confidence that our intelligence agencies can keep such relationships truly confidential because of the

Freedom of Information Act.

It seems unnecessary for us to detail the effects and burdens placed on our intelligence agencies by FOIA. It seems appropriate to quote from Judge Gerhard A. Gesell's opinion in granting CIA's motion for summary judgment of dismissal of the FOIA case brought by Philip Agee. (Agee v CIA, 524 F. Supp. 1290, 17 July 1981). After the Judge conducted a random in camera review of 8,699 CIA documents, he said:

"As far as can be determined this is the first FOIA case where an individual under well-founded suspicion of conduct detrimental to the security of the United States has invoked FOIA to ascertain the direction and effectiveness of his Government's legitimate efforts to ascertain and counteract his effort to subvert the country's foreign intelligence program. It is amazing that a rational security tolerates the expense, the waste of resources, the potential injury to its own security which this process necessarily entails."

The partial relief for CIA from FOIA provisions afforded by S.1324 leaves three specific problems which we believe warrant consideration by this Committee.

1. The time limits for intelligence agencies to respond to requests, which, when not met, convey the authority to file suit, have been demonstrated to be unrealistic and should not be in the law.

2. Any person or group, including convicted felons and representatives of hostile intelligence services can make an FOIA request and then file suit in U.S. Courts. It seems to us the ultimate absurdity to accord the head of the KGB, or other foreign agents, the legal authority to request documents from the CIA and then to file suit in U.S. Courts to enforce such a request.

3. The provision for de novo review by the judiciary, added in the 1974 Amendments to FOIA, was vetoed by President Ford as being unconstitutional. A judge who simply disagrees with the experience and expertise of the Executive Branch as to what is classified is authorized to release such information. This provision is in our view a usurpation of the intelligence responsibility constitutionally vested in the President.

For all the above reasons, AFIO recommends, as it did two years ago before this Committee, that CIA, NSA and the

FBI be exempted from all of the provisions of the Freedom of Information Act and that the President be authorized to designate other intelligence components as similarly exempt. Such a total exemption leaves available to Americans their rights under the Privacy Act to inquire about files maintained concerning them. Also, historians and scholars (citizens and permanent resident aliens) may request mandatory review for declassification of documents under the provisions of the Executive Order 12356.

In view of our understanding of Administration and CIA support of S.1324 we do not oppose its approval, but we strongly urge that the other entities of the intelligence community be accorded similar treatment as is CIA.

It would appear appropriate for the Committee to hear testimony from other parts of the intelligence community to make a judgment on their possible coverage under S.1324.

I would like to add here that three other organizations have authorized me to state that they are in full agreement with the views of the AFIO as just expressed. These organizations are:

1. Society of Former Special Agents
of the FBI, Inc.
24-16 Queens Plaza, South
Long Island City, New York 11101

2. American Security Council

499 South Capitol Street

Washington, D.C. 20003

3. National Intelligence Study Center

1015 Eighteenth Street, N.W.

Washington, D.C. 20036

I would like to thank you for this opportunity to present the views of the AFIO on this most important matter. My colleagues and I will be glad to attempt to answer any questions.